

111TH CONGRESS  
1ST SESSION

# S. 803

To amend the Internal Revenue Code of 1986 to provide a tax credit to employers for the costs of implementing wellness programs, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

APRIL 2, 2009

Mr. HARKIN (for himself, Mr. CORNYN, and Mr. UDALL of New Mexico) introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To amend the Internal Revenue Code of 1986 to provide a tax credit to employers for the costs of implementing wellness programs, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Healthy Workforce Act  
5       of 2009”.

6       **SEC. 2. FINDINGS.**

7       Congress finds the following:

1           (1) The United States has more than 12 million  
2 employers and approximately 135 million working  
3 adults.

4           (2) The use of effective worksite policies and  
5 programs can reduce health risks and improve the  
6 quality of life for the 135 million full-time and part-  
7 time workers in the United States.

8           (3) Workers spend more than one-third of their  
9 day on the job and, as a result, employers are in a  
10 unique position to promote the health and safety of  
11 their employees.

12           (4) Chronic diseases such as heart disease,  
13 stroke, cancer, obesity, and diabetes are among the  
14 most prevalent and costly worker health problems  
15 for most employers.

16           (5) The use by employers of effective worksite  
17 policies and programs can reduce health risks and  
18 improve the quality of life for their employees.

19           (6) The good health of workers is good for busi-  
20 ness because healthier workers miss less work, are  
21 more productive, and have lower health care costs.

22 **SEC. 3. TAX CREDIT TO EMPLOYERS FOR COSTS OF IMPLE-**  
23 **MENTING WELLNESS PROGRAMS.**

24           (a) IN GENERAL.—Subpart D of part IV of sub-  
25 chapter A of chapter 1 of the Internal Revenue Code of

1 1986 (relating to business related credits) is amended by  
 2 adding at the end the following:

3 **“SEC. 45R. WELLNESS PROGRAM CREDIT.**

4 “(a) ALLOWANCE OF CREDIT.—

5 “(1) IN GENERAL.—For purposes of section 38,  
 6 the wellness program credit determined under this  
 7 section for any taxable year during the credit period  
 8 with respect to an employer is an amount equal to  
 9 50 percent of the costs paid or incurred by the em-  
 10 ployer in connection with a qualified wellness pro-  
 11 gram during the taxable year. For purposes of the  
 12 preceding sentence, in the case of any qualified  
 13 wellness program offered as part of an employer-pro-  
 14 vided group health plan, including health insurance  
 15 offered in connection with such plan, only costs at-  
 16 tributable to the qualified wellness program and not  
 17 to the group health plan or health insurance cov-  
 18 erage may be taken into account.

19 “(2) LIMITATION.—The amount of credit al-  
 20 lowed under paragraph (1) for any taxable year shall  
 21 not exceed the sum of—

22 “(A) the product of \$200 and the number  
 23 of employees of the employer not in excess of  
 24 200 employees, plus

1           “(B) the product of \$100 and the number  
2           of employees of the employer in excess of 200  
3           employees.

4           “(b) QUALIFIED WELLNESS PROGRAM.—For pur-  
5 poses of this section—

6           “(1) QUALIFIED WELLNESS PROGRAM.—The  
7           term ‘qualified wellness program’ means a program  
8           which—

9           “(A) consists of any 3 of the wellness pro-  
10          gram components described in subsection (c),  
11          and

12          “(B) which is certified by the Secretary of  
13          Health and Human Services, in coordination  
14          with the Director of the Center for Disease  
15          Control and Prevention, as a qualified wellness  
16          program under this section.

17          “(2) PROGRAMS MUST BE CONSISTENT WITH  
18          RESEARCH AND BEST PRACTICES.—

19          “(A) IN GENERAL.—The Secretary of  
20          Health and Human Services shall not certify a  
21          program as a qualified wellness program unless  
22          the program—

23                 “(i) is consistent with evidence-based  
24                 research and best practices, as identified

1 by persons with expertise in employer  
2 health promotion and wellness programs,

3 “(ii) includes multiple, evidence-based  
4 strategies which are based on the existing  
5 and emerging research and careful sci-  
6 entific reviews, including the Guide to  
7 Community Preventive Services, the Guide  
8 to Clinical Preventive Services, and the  
9 National Registry for Effective Programs,  
10 and

11 “(iii) includes strategies which focus  
12 on employee populations with a dispropor-  
13 tionate burden of health problems.

14 “(B) PERIODIC UPDATING AND REVIEW.—

15 The Secretary of Health and Human Services  
16 shall establish procedures for periodic review of  
17 programs under this subsection. Such proce-  
18 dures shall require revisions of programs if nec-  
19 essary to ensure compliance with the require-  
20 ments of this section and require updating of  
21 the programs to the extent the Secretary, in co-  
22 ordination with the Director of the Centers for  
23 Disease Control and Prevention, determines  
24 necessary to reflect new scientific findings.

1           “(3) HEALTH LITERACY.—The Secretary of  
 2           Health and Human Services shall, as part of the  
 3           certification process, encourage employees to make  
 4           the programs culturally competent and to meet the  
 5           health literacy needs of the employees covered by the  
 6           programs.

7           “(c) WELLNESS PROGRAM COMPONENTS.—For pur-  
 8           poses of this section, the wellness program components de-  
 9           scribed in this subsection are the following:

10           “(1) HEALTH AWARENESS COMPONENT.—A  
 11           health awareness component which provides for the  
 12           following:

13                   “(A) HEALTH EDUCATION.—The dissemi-  
 14                   nation of health information which addresses  
 15                   the specific needs and health risks of employees.

16                   “(B) HEALTH SCREENINGS.—The oppor-  
 17                   tunity for periodic screenings for health prob-  
 18                   lems and referrals for appropriate follow up  
 19                   measures.

20           “(2) EMPLOYEE ENGAGEMENT COMPONENT.—  
 21           An employee engagement component which provides  
 22           for—

23                   “(A) the establishment of a committee to  
 24                   actively engage employees in worksite wellness  
 25                   programs through worksite assessments and

1 program planning, delivery, evaluation, and im-  
2 provement efforts, and

3 “(B) the tracking of employee participa-  
4 tion.

5 “(3) BEHAVIORAL CHANGE COMPONENT.—A  
6 behavioral change component which provides for al-  
7 tering employee lifestyles to encourage healthy living  
8 through counseling, seminars, on-line programs, or  
9 self-help materials which provide technical assistance  
10 and problem solving skills. Such component may in-  
11 clude programs relating to—

12 “(A) tobacco use,

13 “(B) obesity,

14 “(C) stress management,

15 “(D) physical fitness,

16 “(E) nutrition,

17 “(F) substance abuse,

18 “(G) depression, and

19 “(H) mental health promotion (including  
20 anxiety).

21 “(4) SUPPORTIVE ENVIRONMENT COMPO-  
22 NENT.—A supportive environment component which  
23 includes the following:

“(A) ON-SITE POLICIES.—Policies and services at the worksite which promote a healthy lifestyle, including policies relating to—

“(i) tobacco use at the worksite,

“(ii) the nutrition of food available at the worksite through cafeterias and vending options,

“(iii) minimizing stress and promoting positive mental health in the workplace,

“(iv) where applicable, accessible and attractive stairs, and

“(v) the encouragement of physical activity before, during, and after work hours.

“(B) PARTICIPATION INCENTIVES.—

“(i) IN GENERAL.—Qualified incentive benefits for each employee who participates in the health screenings described in paragraph (1)(B) or the behavioral change programs described in paragraph (3).

“(ii) QUALIFIED INCENTIVE BENEFIT.—For purposes of clause (i), the term ‘qualified incentive benefit’ means any benefit which is approved by the Secretary of Health and Human Services, in

1 coordination with the Director of the Cen-  
2 ters for Disease Control and Prevention.

3 “(C) EMPLOYEE INPUT.—The opportunity  
4 for employees to participate in the management  
5 of any qualified wellness program to which this  
6 section applies.

7 “(d) PARTICIPATION REQUIREMENT.—

8 “(1) IN GENERAL.—No credit shall be allowed  
9 under subsection (a) unless the Secretary of Health  
10 and Human Services, in coordination with the Direc-  
11 tor of the Centers for Disease Control and Preven-  
12 tion, certifies, as a part of any certification described  
13 in subsection (b), that each wellness program compo-  
14 nent of the qualified wellness program applies to all  
15 qualified employees of the employer. The Secretary  
16 of Health and Human Services shall prescribe rules  
17 under which an employer shall not be treated as fail-  
18 ing to meet the requirements of this subsection  
19 merely because the employer provides specialized  
20 programs for employees with specific health needs or  
21 unusual employment requirements or provides a  
22 pilot program to test new wellness strategies.

23 “(2) QUALIFIED EMPLOYEE.—For purposes of  
24 paragraph (1), the term ‘qualified employee’  
25 means—

1           “(A) for employers offering health insur-  
 2           ance coverage, an employee who is eligible for  
 3           such coverage, or

4           “(B) for employers not offering health in-  
 5           surance coverage, an employee who works an  
 6           average of not less than 25 hours per week dur-  
 7           ing the taxable year.

8           “(e) OTHER DEFINITIONS AND SPECIAL RULES.—  
 9           For purposes of this section—

10           “(1) EMPLOYEE AND EMPLOYER.—

11           “(A) PARTNERS AND PARTNERSHIPS.—  
 12           The term ‘employee’ includes a partner and the  
 13           term ‘employer’ includes a partnership.

14           “(B) CERTAIN RULES TO APPLY.—Rules  
 15           similar to the rules of section 52 shall apply.

16           “(2) CERTAIN COSTS NOT INCLUDED.—Costs  
 17           paid or incurred by an employer for food or health  
 18           insurance shall not be taken into account under sub-  
 19           section (a).

20           “(3) NO CREDIT WHERE GRANT AWARDED.—  
 21           No credit shall be allowable under subsection (a)  
 22           with respect to any qualified wellness program of  
 23           any taxpayer (other than an eligible employer de-  
 24           scribed in subsection (f)(2)(A)) who receives a grant  
 25           provided by the United States, a State, or a political

1 subdivision of a State for use in connection with  
2 such program. The Secretary shall prescribe rules  
3 providing for the waiver of this paragraph with re-  
4 spect to any grant which does not constitute a sig-  
5 nificant portion of the funding for the qualified  
6 wellness program.

7 “(4) CREDIT PERIOD.—

8 “(A) IN GENERAL.—The term ‘credit pe-  
9 riod’ means the period of 10 consecutive taxable  
10 years beginning with the taxable year in which  
11 the qualified wellness program is first certified  
12 under this section.

13 “(B) SPECIAL RULE FOR EXISTING PRO-  
14 GRAMS.—In the case of an employer (or prede-  
15 cessor) which operates a wellness program for  
16 its employees on the date of the enactment of  
17 this section, subparagraph (A) shall be applied  
18 by substituting ‘3 consecutive taxable years’ for  
19 ‘10 consecutive taxable years’. The Secretary  
20 shall prescribe rules under which this sub-  
21 section shall not apply if an employer is re-  
22 quired to make substantial modifications in the  
23 existing wellness program in order to qualify  
24 such program for certification as a qualified  
25 wellness program.

1           “(C) CONTROLLED GROUPS.—For pur-  
 2           poses of this paragraph, all persons treated as  
 3           a single employer under subsection (b), (c),  
 4           (m), or (o) of section 414 shall be treated as a  
 5           single employer.

6           “(f) PORTION OF CREDIT MADE REFUNDABLE.—

7           “(1) IN GENERAL.—In the case of an eligible  
 8           employer of an employee, the aggregate credits al-  
 9           lowed to a taxpayer under subpart C shall be in-  
 10          creased by the lesser of—

11           “(A) the credit which would be allowed  
 12           under this section without regard to this sub-  
 13           section and the limitation under section 38(c),  
 14           or

15           “(B) the amount by which the aggregate  
 16           amount of credits allowed by this subpart (de-  
 17           termined without regard to this subsection)  
 18           would increase if the limitation imposed by sec-  
 19           tion 38(c) for any taxable year were increased  
 20           by the amount of employer payroll taxes im-  
 21           posed on the taxpayer during the calendar year  
 22           in which the taxable year begins.

23          The amount of the credit allowed under this sub-  
 24          section shall not be treated as a credit allowed under  
 25          this subpart and shall reduce the amount of the

1 credit otherwise allowable under subsection (a) with-  
 2 out regard to section 38(c).

3 “(2) ELIGIBLE EMPLOYER.—For purposes of  
 4 this subsection, the term ‘eligible employer’ means  
 5 an employer which is—

6 “(A) a State or political subdivision there-  
 7 of, the District of Columbia, a possession of the  
 8 United States, or an agency or instrumentality  
 9 of any of the foregoing, or

10 “(B) any organization described in section  
 11 501(c) of the Internal Revenue Code of 1986  
 12 which is exempt from taxation under section  
 13 501(a) of such Code.

14 “(3) EMPLOYER PAYROLL TAXES.—For pur-  
 15 poses of this subsection—

16 “(A) IN GENERAL.—The term ‘employer  
 17 payroll taxes’ means the taxes imposed by—

18 “(i) section 3111(b), and

19 “(ii) sections 3211(a) and 3221(a)  
 20 (determined at a rate equal to the rate  
 21 under section 3111(b)).

22 “(B) SPECIAL RULE.—A rule similar to  
 23 the rule of section 24(d)(2)(C) shall apply for  
 24 purposes of subparagraph (A).

1       “(g) TERMINATION.—This section shall not apply to  
2 any amount paid or incurred after December 31, 2017.”.

3       (b) TREATMENT AS GENERAL BUSINESS CREDIT.—  
4 Subsection (b) of section 38 of the Internal Revenue Code  
5 of 1986 (relating to general business credit) is amended  
6 by striking “plus” at the end of paragraph (34), by strik-  
7 ing the period at the end of paragraph (35) and inserting  
8 “, plus”, and by adding at the end the following:

9               “(36) the wellness program credit determined  
10 under section 45R.”.

11       (c) DENIAL OF DOUBLE BENEFIT.—Section 280C of  
12 the Internal Revenue Code of 1986 (relating to certain  
13 expenses for which credits are allowable) is amended by  
14 adding at the end the following new subsection:

15       “(g) WELLNESS PROGRAM CREDIT.—

16               “(1) IN GENERAL.—No deduction shall be al-  
17 lowed for that portion of the costs paid or incurred  
18 for a qualified wellness program (within the meaning  
19 of section 45R) allowable as a deduction for the tax-  
20 able year which is equal to the amount of the credit  
21 allowable for the taxable year under section 45R.

22               “(2) SIMILAR RULE WHERE TAXPAYER CAP-  
23 ITALIZES RATHER THAN DEDUCTS EXPENSES.—If—

24                       “(A) the amount of the credit determined  
25 for the taxable year under section 45R, exceeds

1           “(B) the amount allowable as a deduction  
 2           for such taxable year for a qualified wellness  
 3           program,  
 4           the amount chargeable to capital account for the  
 5           taxable year for such expenses shall be reduced by  
 6           the amount of such excess.

7           “(3) CONTROLLED GROUPS.—In the case of a  
 8           corporation which is a member of a controlled group  
 9           of corporations (within the meaning of section  
 10          41(f)(5)) or a trade or business which is treated as  
 11          being under common control with other trades or  
 12          business (within the meaning of section  
 13          41(f)(1)(B)), this subsection shall be applied under  
 14          rules prescribed by the Secretary similar to the rules  
 15          applicable under subparagraphs (A) and (B) of sec-  
 16          tion 41(f)(1).”.

17          (d) CLERICAL AMENDMENT.—The table of sections  
 18          for subpart D of part IV of subchapter A of chapter 1  
 19          of the Internal Revenue Code of 1986 is amended by add-  
 20          ing at the end the following:

“Sec. 45R. Wellness program credit.”.

21          (e) EFFECTIVE DATE.—The amendments made by  
 22          this section shall apply to taxable years beginning after  
 23          December 31, 2009.

24          (f) OUTREACH.—

1           (1) IN GENERAL.—The Secretary of the Treas-  
2       ury, in conjunction with the Director of the Centers  
3       for Disease Control and members of the business  
4       community, shall institute an outreach program to  
5       inform businesses about the availability of the  
6       wellness program credit under section 45R of the In-  
7       ternal Revenue Code of 1986 as well as to educate  
8       businesses on how to develop programs according to  
9       recognized and promising practices and on how to  
10      measure the success of implemented programs.

11          (2) AUTHORIZATION OF APPROPRIATIONS.—  
12      There are authorized to be appropriated such sums  
13      as are necessary to carry out the outreach program  
14      described in paragraph (1).

○